

September 1, 2021

Honorable Richard M. Berman, District Court Judge
United States District Court for the Southern District of New York
Daniel Patrick Moynihan United States Courthouse

500 Pearl Street, New York, NY 10007

VIA ECF

Re: *United States v. Usher et al.*, No. 17-cr-19 (RMB)

Dear Judge Berman:

We write on behalf of our client, Richard Usher, with regard to the schedule governing his application for a modification of the Protective Order. For the reasons discussed below, we seek an extension for the parties to report on their specific agreements and disagreements until resolution of the mootness question in *Usher v. U.S. Dep't of Justice et al.*, No. 21-cv-654 (D.D.C.), as explained below. The United States does not oppose this request for an extension, but does not join in the remainder of this letter.

We last updated the Court about our progress on May 28, 2021 (ECF No. 268), and earlier on March 26, 2021 (ECF No. 266), and January 25, 2021 (ECF No. 261). Following the May 28 update, the Court set September 6, 2021 as the deadline for the parties to report on their specific agreements and disagreements. *See* June 1, 2021 Order (ECF No. 269).

Since the last update to the Court, on July 7, 2021, OCC enforcement counsel unilaterally moved to dismiss the enforcement action against Mr. Usher with prejudice. On July 8, 2021, the OCC Administrative Law Judge, Judge Jennifer Whang, administratively closed the OCC case.

However, the parallel *Touhy* proceeding in the U.S. District Court for the District of Columbia, which concerns the full Department of Justice criminal file, remains live and is the basis for this request for an extension. Usher also continues to pursue his post-dismissal remedies.

By way of background, on January 14, 2021, Usher submitted a comprehensive *Touhy* request to then-Assistant Attorney General Makan Delrahim. Usher's *Touhy* request sought the complete set of documents produced by DOJ to Usher in the criminal case. In a February 9, 2021 letter from Deputy Chief Legal Advisor Sarah Oldfield, DOJ denied the *Touhy* request in its entirety. Subsequently, on March 11, 2021, Usher brought suit in the U.S. District Court for the District of Columbia, seeking declaratory and injunctive relief from DOJ's denial of the *Touhy* requests. *Usher v. U.S. Dep't of Justice et al.*, No. 21-cv-654 (D.D.C.) ("DDC Proceeding"). Following the closing of the OCC enforcement action, Judge Rudolph Contreras stayed the parties' cross-motions for summary judgment in the DDC Proceeding. Minute Order (August 17, 2021), DDC Proceeding. In Usher's *Touhy* action, Judge Contreras also ordered the parties brief the issue of mootness, with the Department of Justice's first brief due September 10, 2021, followed by Mr. Usher's opposition (September 24, 2021) and the Department of Justice's reply brief (October 1, 2021). Minute Order (August 17, 2021), DDC Proceeding.

As with the last extension that the Court granted Mr. Usher, the instant request also is specifically designed to support our continued pursuit of the courses of action that the Court endorsed in its December 22, 2020 Order (regarding Rohan Ramchandani). ECF No. 255. These courses of action include submitting “a *Touhy* application with the Department of Justice.”

For the foregoing reasons, we ask the Court to grant the requested extension until the parties may report as to the resolution of the mootness question in the DDC Proceeding, and any agreements or disagreement between the parties that remain at that time.

Respectfully submitted:

/s/ Michael Kendall

Michael Kendall
White & Case LLP
75 State Street
Boston, MA 02109

J. Mark Gidley
White & Case LLP
701 13th Street N.W.
Washington, DC 20005

Application respectfully denied.
Because of the impending holidays, Def
Usher may have until Friday,
September 17, 2021 at noon to make its
submission. This date is final.

SO ORDERED:

Date: 9/3/21



Richard M. Berman, U.S.D.J.